

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. GARY LEE SUTTON,

Defendant.

INDICTMENT

18 U.S.C. § 1341, Mail Fraud

49 U.S.C. §§ 32703(2) and 32709(b), Odometer Tampering

49 U.S.C. §§ 32705(a) and 32709(b), False Odometer Statements

18 U.S.C. § 2, Aiding and Abetting

The Grand Jury charges that:

COUNTS 1-2

(Mail Fraud)

At times relevant to this Indictment:

1. Defendant GARY LEE SUTTON was a used car dealer in the Denver, Colorado, area, operating under various dealership names, including Knuckey Motors. Defendant GARY LEE SUTTON purchased used motor vehicles in the District of Colorado and later sold those vehicles to automobile dealers in Colorado and elsewhere.

2. As used in this Indictment, the following vehicle numbers refer to the vehicles identified below:

<u>Vehicle No.</u>	<u>Year/Make</u>	<u>Vehicle Identification Number</u>
1	1995 Jeep	1J4GZ78S5SC609731
2	1996 Ford	1FTCR15X7TPB62718
3	1998 Dodge	3B7HF12ZXWM255151
<u>4</u>	1999 Ford	1FTZR15X7XPA89933
5	1994 Dodge	1B7GG23Y6RS627956
6	1997 Jeep	1J4GZ78Y6VC501370
7	1997 GMC	1GTCT19W9V8525858
8	1998 Dodge	1B7GG22Y4WS626334
9	1996 Ford	1FTCR15X8TPA22614
10	1999 Ford	1FTZR15X1XTA50505

Scheme and Artifice to Defraud

3. Beginning at a time unknown to the Grand Jury, but at least as early as 1997, and continuing through at least 2003, within the District of Colorado and elsewhere, GARY LEE SUTTON, defendant herein, did knowingly devise and intend to devise a scheme and artifice to defraud and to obtain money and property from buyers of used motor vehicles by means of materially false and fraudulent pretenses,

representations, and promises, well knowing that said pretenses, representations, and promises would be and were false and fraudulent when made.

4. It was the purpose of said scheme and artifice to defraud for defendant GARY LEE SUTTON to obtain money through fraudulent means, by causing purchasers of used motor vehicles to pay a higher sales price for vehicles than those purchasers would have paid had defendant disclosed the vehicles' correct mileage readings.

Manner and Means

5. It was part of said scheme and artifice to defraud that defendant GARY LEE SUTTON attended various wholesale used motor vehicle auctions for the purpose of buying high-mileage used motor vehicles. GARY LEE SUTTON purchased the high-mileage vehicles using various dealership names, including Knuckey Motors.

6. It was further part of said scheme and artifice to defraud that defendant GARY LEE SUTTON caused the odometers in the used motor vehicles he had purchased to be changed to reflect false, lower mileage figures.

7. It was further part of said scheme and artifice to defraud that, to hide the fact that he had caused the odometers of the motor vehicles to reflect false, lower mileages, defendant GARY LEE SUTTON at various times applied for and obtained duplicate titles from the State of Colorado. Defendant GARY LEE SUTTON included with the title applications forged odometer disclosure statements stating false, lower mileages and purporting to show that the vehicles had been sold directly from private

parties to Knuckey Motors rather than through the wholesale motor vehicle auction. On the back of the duplicate Colorado titles, defendant GARY LEE SUTTON wrote false, lower mileages as well as false transfers to other dealerships.

8. It was further part of said scheme and artifice to defraud that, to hide the fact that he had caused the odometers of the motor vehicles to reflect false, lower mileages, defendant GARY LEE SUTTON at various times submitted "Statement of Fact" forms to the State of Colorado which falsely stated that the odometers of the vehicles he had purchased were not functional and had been replaced with working odometers that displayed mileages lower than the vehicles' actual mileages. The State of Colorado issued new titles that reflected the false, lower mileages along with the letter "N," which meant that the mileages were "not actual." On the back of the new titles, defendant GARY LEE SUTTON falsely wrote that the vehicles had been sold to other dealerships, and that the false, lower mileages were the actual mileages.

9. It was further part of said scheme and artifice to defraud that defendant GARY LEE SUTTON took the Colorado titles he had obtained and sent them to a private vehicle title service in Phoenix, Arizona, along with applications for new Arizona titles in his own name at an Arizona address. GARY LEE SUTTON falsely wrote on the Arizona title applications that the Colorado titles displayed "actual mileage." It was GARY LEE SUTTON's intent that the new Arizona titles would display the false, lower mileages as actual mileages.

10. It was further part of said scheme and artifice to defraud that defendant GARY LEE SUTTON instructed the Arizona title service to send via a commercial interstate carrier the new Arizona titles bearing the false, lower mileages to addresses in Colorado where GARY LEE SUTTON received mail.

11. It was further part of said scheme and artifice to defraud that defendant GARY LEE SUTTON subsequently sold the motor vehicles to dealers in the District of Colorado and falsely represented that the false, lower mileages then appearing on the vehicles' odometers and the accompanying Arizona titles were accurate.

12. It was further part of said scheme and artifice to defraud that, as a result of his actions and misrepresentations, defendant GARY LEE SUTTON received a higher sales price for the vehicles than he would have received if he had informed buyers of the vehicles' true mileage, and that buyers of the vehicles, including the ultimate consumer purchasers, paid more for the vehicles than they would have paid if they had known the vehicles' true mileage.

Execution of the Scheme and Artifice to Defraud

13. On or about the dates listed below, within the District of Colorado, for the purpose of executing and attempting to execute said scheme and artifice to defraud, GARY LEE SUTTON, defendant herein, did receive and cause to be received from a commercial interstate carrier the Arizona titles of the motor vehicles listed below, which titles stated the vehicles had the false, lower mileages listed below when, in fact, the

vehicles had the approximate high mileages listed below when the defendant acquired them:

<u>Count</u>	<u>Vehicle No.</u>	<u>Date</u>	<u>High Mileage</u>	<u>False Mileage</u>
1	1	June 13, 2001	151,348	81,456
2	2	August 6, 2001	114,060	62,967

Each of the foregoing counts 1-2 was in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 3-12
(Odometer Tampering)

14. The Grand Jury realleges and incorporates by reference the allegations in Paragraphs 1-2 and further charges that:

15. On or about the dates listed below, within the District of Colorado, GARY LEE SUTTON, defendant herein, did knowingly and willfully reset and alter, and cause to be reset and altered, the odometers in the motor vehicles listed below, with the intent to change the number of miles indicated on the odometer from the approximate high mileages listed below to the approximate false mileages listed below, each such instance being a separate and additional Count of this Indictment:

<u>Count</u>	<u>Vehicle No.</u>	<u>Date</u>	<u>High Mileage</u>	<u>False Mileage</u>
3	1	May 29, 2001	151,348	81,493
4	2	June 26, 2001	114,060	63,031

5	3	July 15, 2002	109,012	54,786
6	4	August 1, 2002	172,471	62,418
7	5	September 12, 2002	157,409	96,286
8	6	October 22, 2002	119,206	64,684
9	7	November 19, 2002	158,610	72,149
10	8	September 24, 2002	107,205	61,777
11	9	October 8, 2002	159,877	78,969
12	10	December 20, 2002	95,355	53,264

Each of the foregoing counts 3-12 was in violation of Title 49, United States Code, Sections 32703(2) and 32709(b), and Title 18, United States Code, Section 2.

COUNTS 13-22
(False Odometer Statements)

16. The Grand Jury realleges and incorporates by reference the allegations in Paragraphs 1-2 and further charges that:

17. On or about the dates listed below, in the District of Colorado, GARY LEE SUTTON, defendant herein, in making the written disclosures to the buyers of used motor vehicles required by Title 49, United States Code, Section 32705(a), and Title 49, Code of Federal Regulations, Part 580, did knowingly and willfully give and cause to be given false statements relating to the cumulative mileage registered on the odometers of the motor vehicles listed below, in that defendant GARY LEE SUTTON certified as accurate the false mileages listed below, when in fact the odometers of the vehicles had registered

the approximate high mileages listed below when the defendant GARY LEE SUTTON acquired the vehicles, each such instance being a separate and additional Count of this Indictment:

<u>Count</u>	<u>Vehicle No.</u>	<u>Date</u>	<u>High Mileage</u>	<u>False Mileage</u>
13	1	July 11, 2001	151,348	81,521
14	2	August 23, 2001	114,060	63,125
15	3	July 16, 2002	109,012	54,954
16	4	August 9, 2002	172,471	62,487
17	5	September 16, 2002	157,409	96,298
18	6	November 19, 2002	119,206	64,687
19	7	November 30, 2002	158,610	71,850
20	8	December 8, 2002	107,205	62,035
21	9	December 10, 2002	159,877	78,976
22	10	January 9, 2003	95,355	53,435

Each of the foregoing counts 13-22 was in violation of Title 49, United States Code, Sections 32705(a) and 32709(b), and Title 18, United States Code, Section 2.

A True Bill:

s/Foreperson

Grand Jury Foreperson

WILLIAM J. LEONE
United States Attorney

s/James O. Hearty

By: James O. Hearty
Assistant U.S. Attorney
United States Attorney's Office
1225 17th Street, Suite 700
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0403
E-mail: james.hearty@usdoj.gov
Attorney for the Government

s/Alan Phelps

Alan Phelps
Trial Attorney
U.S. Department of Justice
Office of Consumer Litigation
1331 Pennsylvania Ave., N.W. Suite 950N
Washington, D.C. 20005
Telephone: (202) 307-6154
Fax: (202) 514-8742
E-mail: alan.phelps@usdoj.gov
Attorney for the Government